

PS  
fill  
bulkhead

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT ISSUED BY )  
KITSAP COUNTY TO RICHARD O. BLACK )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Appellants, )  
vs. )  
KITSAP COUNTY and )  
RICHARD O. BLACK, )  
Respondents. )

SHB No. 93

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER being a request for review of a substantial development permit granted for fill and bulkhead having come on regularly for hearing before the Shorelines Hearings Board on January 9 and 18, 1974, at Port Orchard, Washington; and appellants Department of Ecology and Attorney General appearing through their attorney, Robert V. Jensen, and respondent Kitsap County appearing

1 through its deputy prosecuting attorney, W. Daniel Phillips, and  
2 respondent Richard O. Black appearing pro se; and Board members  
3 present at the hearing being Walt Woodward, Mary Ellen McCaffree,  
4 Robert F. Hintz, Robert E. Beaty and W. A. Gissberg (present for the  
5 first day of the hearing only); and the Board having considered the  
6 sworn testimony, exhibits, records and files herein and arguments of  
7 counsel and having entered on the 6th day of February, 1974, its  
8 proposed Findings of Fact, Conclusions of Law and Order; and the  
9 Board having served said proposed Findings, Conclusions and Order  
10 upon all parties herein by certified mail, return receipt requested  
11 and twenty days having elapsed from said service; and

12 The Board having received exceptions to said proposed Findings,  
13 Conclusions and Order from respondent Black and having considered  
14 and denied same; and the Board being fully advised in the premises;  
15 now therefore,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
17 Findings of Fact, Conclusions of Law and Order, dated the 6th day of  
18 February, 1974, and incorporated by this reference herein and attached  
19 hereto as Exhibit A, are adopted and hereby entered as the Board's  
20 Final Findings of Fact, Conclusions of Law and Order herein.

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FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 19th day of April, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 Robert E. Beaty  
6 ROBERT E. BEATY, Member

7 Robert F. Hintz  
8 ROBERT F. HINTZ, Member

9 Mary Ellen McCaffrey  
10 MARY ELLEN MCCAFFREY, Member

11  
12 CERTIFICATION OF MAILING

13 I, Dolories Osland, certify that I mailed copies of the foregoing  
14 document on the 22nd day of April, 1974 to each of the following  
15 parties:

16 Mr. Robert V. Jensen  
17 Assistant Attorney General  
18 Department of Ecology  
Olympia, Washington 98504

19 Mr. W. Daniel Phillips  
20 Deputy Prosecuting Attorney  
21 Kitsap County Courthouse  
614 Division Street  
Port Orchard, Washington 98366

22 Mr. Richard O. Black  
23 P. O. Box 194  
Keyport, Washington 98345

24 Board of County Commissioners  
25 Kitsap County Courthouse  
614 Division Street  
Port Orchard, Washington 98366

26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 Mr. Leighton Pratt  
2 Department of Ecology  
3 St. Martin's College  
4 Olympia, Washington 98504

5 the foregoing being the last known post office addresses of the above-  
6 named parties. I further certify that proper postage had been affixed  
7 to the envelopes deposited in the U. S. mail.

8 Dolores Osland  
9 DOLORIES OSLAND, Clerk  
10 SHORELINES HEARINGS BOARD  
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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
KITSAP COUNTY TO RICHARD O. BLACK

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

vs.

KITSAP COUNTY and  
RICHARD O. BLACK,

Respondents.

SHB No. 93

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the request for review of a substantial development permit issued by Kitsap County to Richard O. Black, came before the Shorelines Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree, Robert F. Hintz and Robert E. Beaty, the designee for this hearing of the Association of Washington Counties; William A. Gissberg was present for the first day of the hearing only)

EXHIBIT A

1 at a hearing in the City Hall of Port Orchard, Washington on  
2 January 9 and 18, 1974.

3 Appellants were represented by Robert V. Jensen, assistant attorney  
4 general; Kitsap County by W. Daniel Phillips, deputy prosecuting attorney,  
5 and Mr. Black appeared pro se. Richard Reinertsen, Olympia court  
6 reporter, recorded the proceedings.

7 Witnesses were sworn and testified. Exhibits were admitted. Counsel  
8 and Mr. Black made closing arguments.

9 From testimony heard, exhibits examined and arguments considered,  
10 the Shorelines Hearings Board makes these

11 FINDINGS OF FACT

12 I.

13 In 1955, respondent Black purchased Lot 5, Block 2 in the original  
14 Town of Keyport plat. Mr. Black believes that this purchase gave him  
15 title to the second class tidelands fronting his upland property.

16 II.

17 The tidelands fronting Mr. Black's upland property were patented  
18 after statehood. There is no completed sale document in state archives  
19 showing that those tidelands have been sold to another entity.

20 III.

21 When Mr. Black purchased the property there was a vertical face  
22 concrete bulkhead separating his upland property from the tidelands.  
23 The toe of the bulkhead was about at the ten foot tide mark. In  
24 December, 1972, the bulkhead failed and collapsed seaward.

25 IV.

26 To prevent erosion of his upland property, to enhance his view

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 and to create new dry land so that a more pleasing contouring and land-  
2 scaping of his property in relation to his neighbor to the west could be  
3 affected, Mr. Black applied to Kitsap County for a substantial development  
4 permit under the Shoreline Management Act for a bulkhead and fill.

5 V.

6 On May 21, 1973, Kitsap County granted to Mr. Black a substantial  
7 development permit for a landfill and bulkhead to go seaward no more  
8 than 15 feet from the toe of the collapsed bulkhead. On July 16, 1973,  
9 appellants filed with this Board the request for review of that permit  
10 which is the subject of this matter.

11 VI.

12 Liberty Bay, an arm of Puget Sound, is the salt water body on  
13 which Mr. Black's property fronts at Keyport. The Bay is virtually  
14 landlocked and is used by the public for boating, fishing, swimming,  
15 water skiing and other aquatic endeavors. For the full width of  
16 Mr. Black's property, his proposed fill and bulkhead would be a 15 foot  
17 intrusion into the public's rights of navigation.

18 VII.

19 Landward of the bulkhead as proposed by Mr. Black there is a  
20 shelly berm between the 9 and 10 foot tide level. The optimum tide  
21 level mark for successful spawning of surf smelt eggs is between the  
22 9 and 10 foot tide level. Surf smelt eggs have been found on the  
23 shelly berm fronting Mr. Black's upland property. Surf smelt are an  
24 important natural resource of the state; they have some commercial value  
25 and some recreational fishing value but their principal importance is as  
26 forage for salmon and other larger fish. The construction of Mr. Black's

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 proposed fill and bulkhead would destroy the surf smelt spawning area  
2 fronting his upland property and would have a significant adverse impact  
3 on surf smelt.

4 VIII.

5 The projection of a bulkhead and fill as proposed by Mr. Black in  
6 the instant substantial development permit is likely to cause adverse  
7 effects on neighboring beaches causing alterations of the natural  
8 shoreline with a scouring effect.

9 IX.

10 Prevention of erosion of Mr. Black's upland property can be  
11 affected by the construction of a new bulkhead on the line of the  
12 collapsed structure.

13 X.

14 Any Conclusion of Law hereinafter recited which should be deemed  
15 a Finding of Fact is hereby adopted as such.

16 From these Findings, the Shorelines Hearings Board comes to these

17 CONCLUSIONS

18 I.

19 The instant request for review was timely filed and the Shorelines  
20 Hearings Board has jurisdiction of this matter.

21 II.

22 The instant substantial development permit is not consistent with  
23 RCW 90.58.020, particularly as to "protecting against adverse effects  
24 to . . . the waters of the state and their aquatic life, while  
25 protecting generally public right's of navigation and corollary rights  
26 incidental thereto."

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER



1 III.

2 The substantial development permit in this matter is not consistent  
3 with WAC 173-16-060(11) particularly as to (a), (b) and (e).

4 IV.

5 The substantial development permit in this matter is not consistent  
6 with WAC 173-16-060(14), particularly as to (c).

7 V.

8 There apparently is a dispute between the parties in this matter  
9 as to the ownership of the tidelands fronting Mr. Black's upland  
10 property. The Board does not believe it has jurisdiction to adjudicate  
11 this dispute and has considered this matter only within the perimeters  
12 of the Shoreline Management Act of 1971 (RCW 90.58).

13 VI.

14 Any Finding of Fact, which should be deemed a Conclusion of Law  
15 is hereby adopted as such.

16 From these Conclusions, the Shorelines Hearings Board makes this

17 ORDER

18 The request for review is sustained and the instant substantial  
19 development permit is declared null and void. If Mr. Black should  
20 reapply for a substantial development permit to prevent erosion of his  
21 upland property, Kitsap County is directed to grant such a permit on  
22 the line of the collapsed bulkhead.

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26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

DONE at Lacey, Washington this 6<sup>th</sup> day of February, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

Robert E. Beaty  
ROBERT E. BEATY, Member

Robert F. Hintz  
ROBERT F. HINTZ, Member

Mary Ellen McCaffree  
MARY ELEN MCCAFFREE, Member

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT ISSUED BY )  
2 LEWIS COUNTY TO JACK G. BATY )  
3 JACK G. BATY, )  
4 Appellant, )  
5 vs. )  
6 LEWIS COUNTY, )  
7 Respondent. )

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SHB No. 97

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

9 THIS MATTER being a request for review for a recreational  
10 subdivision; having come on regularly for hearing before the Shorelines  
11 Hearings Board on the 17th day of December, 1973, at Chehalis, Washington;  
12 and appellant Jack G. Baty appearing through his attorney, Laurel L.  
13 Tiller and respondent Lewis County appearing through its deputy  
14 prosecuting attorney, Norm Stough; and Board members present at the  
15 hearing being W. A. Gissberg (presiding), Ralph A. Beswick, Walt Woodward,  
16 Mary Ellen McCaffree and Robert Beaty; and the Board having considered  
17 the sworn testimony, exhibits, records and files herein and having  
18 entered on the 27th day of March, 1974, its proposed Findings of Fact,

1 Conclusions of Law and Order, and the Board having served said proposed  
2 Findings, Conclusions and Order upon all parties herein by certified  
3 mail, return receipt requested and all parties having submitted a  
4 Waiver of Exception and Written Argument and Request for Final Order, and

5 The Board being fully advised in the premises; now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
7 Findings of Fact, Conclusions of Law and Order, dated the 27th day of  
8 March, 1974, and incorporated by this reference herein and attached  
9 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
10 Findings of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 26<sup>th</sup> day of April, 1974.

12 SHORELINES HEARINGS BOARD

13  
14 Walt Woodward  
WALT WOODWARD, Chairman

15  
16 W. A. Gissberg  
17 W. A. GISSBERG, Member

18  
19 Mary Ellen McCaffree  
MARY ELLEN McCAFFREE, Member

20  
21 Ralph A. Beswick  
22 RALPH A. BESWICK, Member

23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
LEWIS COUNTY TO JACK G. BATY

JACK G. BATY,

Appellant,

vs.

LEWIS COUNTY,

Respondent.

SHB No. 97

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter having come on for hearing on December 17, 1973 in Chehalis, Washington before Board members W. A. Gissberg (presiding), Ralph A. Beswick, Walt Woodward, Mary Ellen McCaffree and Robert Beaty, appellant appearing personally and through his attorneys, Dysart, Moore, Tiller & Murray, Laurel L. Tiller of counsel; and Lewis County appearing by and through its deputy prosecuting attorney, Norm Stough, and the Board having heard the testimony and considered the evidence and being fully advised makes the following

EXHIBIT A

1 FINDINGS OF FACT

2 I.

3 On July 2, 1973 Lewis County issued a substantial development permit  
4 to Jack G. Baty for a recreational subdivision as to real estate more  
5 particularly described in the application of appellant which is a part  
6 of this cause.

7 II.

8 On July 27, 1973 the appellant appealed from a portion of that permit.  
9 that portion being the following requirement:

10 "All road construction shall comply to minimum  
11 standards for road construction as set forth by the  
12 Lewis County Engineer and also found in the Lewis  
13 County Subdivision Resolution dated March 26, 1962  
14 as revised August 9, 1971, Article 5, Section 5.01  
15 thru 5.23."

14 III.

15 On August 28, 1973 the office of the attorney general of the State of  
16 Washington certified the appellant's request for review as being a  
17 reasonable one.

18 IV.

19 Appellant does have a Department of Ecology permit for a recreational  
20 subdivision in a flood plain by Permit No. 2-1302. The property is not  
21 within the floodway of the flood plain. Purchasers of the lots will not  
22 be required to procure a shoreline management permit nor a flood plain  
23 control zone permit for the construction of a single family residence.

24 V.

25 The appellant's proposed recreational subdivision seeks to retain  
26 as much as possible of the natural conditions of the shorelines of the

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 state as is consistent with providing access to the tracts or lots within  
2 the subdivision.

3 VI.

4 The Lewis County subdivision ordinance is essentially designed to  
5 lay down certain mandatory requirements which are applicable in the case  
6 of more intense land development. By its terms, the subdivision ordinance  
7 expressly excludes from its coverage the division of land where each  
8 parcel is five acres or more in area.

9 VII.

10 Each parcel of land within appellant's proposed plat is five acres or  
11 more in area.

12 VIII.

13 There was no evidence presented at the hearing relating to the  
14 status of the master program of Lewis County.

15 From which comes the following

16 CONCLUSIONS OF LAW

17 I.

18 This Board has jurisdiction of the parties and subject matter of  
19 the review.

20 II.

21 The substantial development shoreline management permit, as ordered  
22 modified by this Board, is consistent with the policy of the Shoreline  
23 Management Act, the Guidelines of the Department of Ecology and, insofar  
24 as can be ascertained, the master program of Lewis County.

25 III.

26 The matter should be remanded to Lewis County for the reissuance of

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 a permit in accordance with the following:

- 2 1) The requirement mentioned in paragraph II of  
3 these Findings of Fact shall be stricken.
- 4 2) All roads within the subdivision shall be "all  
5 weather" roads typical to those utilized in the  
6 surrounding area and used for recreational forest  
7 access.
- 8 3) The travel surface of such roads shall be not  
9 less than 16 feet in width with ditching where  
10 necessary.
- 11 4) The construction of any road whose grade is in  
12 excess of ten percent shall be subject to erosion  
13 control measures and requirements to be first  
14 approved by the Lewis County Engineer.
- 15 5) The substantial development permit is limited  
16 to the roads and the lots or subdivisions as now laid  
17 out and described on Appellant's Exhibit 3. The  
18 permit should contain a specific legal description  
19 confining the substantial development permit to the  
20 area of Appellant's Exhibit 3 showing lots and  
21 subdivisions thereon together with road access  
22 thereto.
- 23 6) No roads shall be constructed within 200 feet of the  
24 Cowlitz River and Otter Creek, except as otherwise  
25 shown on Appellant's Exhibit 3. This condition  
26 should be expressed by description upon the permit.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER



1           7) There are two areas in the subdivision in which  
2           the proposed roadway grade exceeds the maximum  
3           allowable grade percentage contained in the Lewis  
4           County subdivision regulations. Those areas shall  
5           be finished by appellant in a double oil mat surface.  
6           Area B of Exhibit 3 shall also be so finished, if  
7           in the opinion of the Lewis County Engineer such  
8           is desirable or necessary for road travel.

9                               ORDER

10          The permit is remanded to Lewis County to reissue the permit in  
11 accordance with the Conclusions of Law expressed herein and in such form  
12 as shall expressly and definitively state thereon the conditions under  
13 which the substantial development may proceed.

14          DATED this 27<sup>th</sup> day of March, 1974.

15                               SHORELINES HEARINGS BOARD

16                               Walt Woodward  
17                               WALT WOODWARD, Chairman

18                               W. A. Gissberg  
19                               W. A. GISSBERG, Member

20                               Mary Ellen McCaffree  
21                               MARY ELLEN McCAFFREE, Member

22                               \_\_\_\_\_  
23                               ROBERT BEATY, Member

24                               Ralph A. Beswick  
25                               RALPH A. BESWICK, Member

26  
27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
KITITITAS COUNTY TO PAT KEATING

HELEN WOLFSEHR, HAROLD LINDSTROM,  
GLORIA LINDSTROM, DOROTHY HOWARD,  
DOROTHY COLE, STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and SLADE  
GORTON, ATTORNEY GENERAL,

Appellants,

vs.

KITITITAS COUNTY AND PAT KEATING,

Respondents.

SHB Nos 103, 103-A, 103-B,  
103-C and 103-E

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

A hearing on the consolidated above-numbered requests for review  
to the issuance of a conditional shoreline management substantial  
development permit was held in Ellensburg, Washington on February 21  
and 22, 1974 before Board members, Walt Woodward (presiding), W. A.  
Gissberg, Mary Ellen McCaffree, Edward Heavey, Ralph A. Beswick and  
Robert F. Hintz.

1 The State of Washington, appellants, appeared through Thomas C  
2 Evans, assistant attorney general; appellants, Helen Wolfsehr, Gloria  
3 Lindstrom and Dorothy Cole appeared pro se; appellants Harold Lindstrom  
4 and Dorothy Howard did not appear.

5 Respondent, Pat Keating, appeared through his attorney, John  
6 Gilreath.

7 Kittitas County was not represented by counsel, although two of  
8 its county commissioners were present, as was its planning director.

9 Having heard the testimony and arguments and the exceptions of the  
10 parties, and being fully advised, the Board makes and enters these

#### 11 FINDINGS OF FACT

##### 12 I.

13 In May, 1973, Pat Keating (respondent) a Shell Oil Company gasoline  
14 dealer, purchased three and one-half acres of unimproved land (hereinafter  
15 site) near Ellensburg, Kittitas County, Washington. It is not known  
16 whether the site is within the 50 year frequency floodway, but it is  
17 within a flood control zone established by the Department of Ecology.  
18 The site is bordered by: the Yakima River, property owned by the City of  
19 Ellensburg and until recently used by it as a sanitary landfill for  
20 disposal of its garbage, and various roadways. The elevation of the  
21 site is below that of the grade of the adjacent freeway, freeway  
22 interchange, and a roadway bordering the river.

##### 23 II.

24 There are no improvements on the site. An area in excess of one  
25 acre (derived from the Board's visit to the site) is now a pond of  
26 seep water in a shallow depression formed by the excavation of material

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

therefrom during the time of a nearby highway construction project. The former adjacent landfill garbage dump is higher in elevation than the subject site. As a consequence, the quality of the pond water is degraded by a high fecal coliform and bacteria count, the bottom of the pond is "muck", and discarded tires, trash, piles of dirt and debris have given the site an ecologically abused appearance. Respondent, Keating, did not create that condition, but he has received a multitude of complaints from other persons concerning the pond's use as a public garbage dump, mosquitoes therefrom, and fill material dumped nearby by unknown persons.

### III.

The pond and the Yakima River, a shoreline of "state-wide significance" under the Shoreline Management Act, are separated only by a narrow roadway over which access was previously gained to the garbage dump. Although a part of the access road is owned in fee by respondent, Keating, it is subject to an easement. A gate across the roadway at the entrance to the former dump site now prevents the public from entering therein. It is reasonable to expect that some persons, frustrated in their attempts to reach the former public dump site, will continue in the near future to deposit debris in respondent's handy pond.

### IV.

Respondent applied for (April 16, 1973) and was denied (June 18, 1973) a shoreline management substantial development permit for a landfill and the construction of a restaurant and gas station. That application was accompanied by a vicinity map and profiles showing the

1 proposed elevation of the fill and ordinary high water of the Yakima  
2 River. Respondent, Kittitas County, determined, after evaluating and  
3 considering environmental factors, that such project was major but that  
4 the environmental consequences were insignificant and that no environ-  
5 mental impact statement was necessary.

6 V.

7 On July 16, 1973, the site was rezoned from agricultural to  
8 commercial. On July 17, 1973, respondent again applied for a shoreline  
9 management substantial development permit. However, the application  
10 was limited to a landfill, although Mr. Keating's long range hope and  
11 plan is to be able to construct a quality restaurant thereon. Even  
12 though Mr. Keating may not be authorized, in the future, to use his  
13 site for commercial purposes, he would nonetheless fill the pond  
14 thereon.

15 VI.

16 An examination of the application, the affidavit of publication,  
17 the permit itself and testimony make it abundantly clear that the  
18 permit did not authorize any construction other than a landfill on  
19 the site. At any event, respondent received the assistance of the staff  
20 of the Kittitas County Planning Office in completing and filing his  
21 application for a shoreline management substantial development permit.  
22 The same vicinity map and proposed elevations (APP Exhibit 16)  
23 furnished with his first application were utilized by the planning  
24 staff and the county commissioners in their consideration of his second  
25 application. Similarly, the County in evaluating and considering the  
26 environmental consequences of the landfill, relied upon its prior

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 determinations of negative impact made while considering the larger  
2 project for a fill, restaurant and gas station found in Appellant's  
3 Exhibit 9.

4 On September 4, 1973 respondent was granted a permit for a "land-  
5 fill of portion of a three and one-half acre parcel" to which these  
6 requests for review followed.

7 VII.

8 Respondent's Exhibit 1 demonstrates that the county commissioners  
9 intended that the landfill permit be subjected to the imprecise  
10 conditions that the fill be approved by the county engineer and health  
11 officer as to "type of" fill "material" and "how (method) acreage is  
12 filled". Those conditions were not stated upon the permit, nor was  
13 Appellant's Exhibit 16 or Respondent's Exhibit 1 attached thereto nor  
14 referenced in any way.

15 VIII.

16 The site, in its present condition, is meager in bird life, but it  
17 could be improved and be made into a bird habitat. Filling of the pond  
18 would have an inconsequential effect on the bird life supported by the  
19 waters and wetlands of the Yakima River.

20 IX.

21 Commercial development of private property along the Yakima River  
22 between Cle Elum and Ellensburg (the site is so located) is practically  
23 non-existent. The comprehensive park and recreational system plan of  
24 the City of Ellensburg envisions the preservation of the natural  
25 characteristics of the Yakima River. The construction of most commercial  
26 buildings on the site would be incompatible with the comprehensive plan.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORD

1 However, a filling of a portion of the site would restore its original  
2 condition.

3 X.

4 The goal of the City of Ellensburg is to acquire the site for park  
5 purposes by the year 2,000. There are no plans for its acquisition in  
6 the near future although other properties are being acquired.

7 XI.

8 A master program under the Shoreline Management Act has not yet  
9 been adopted by Kittitas County. The Citizens Shoreline Advisory  
10 Committee did not adopt a statement of its goals until September 27, 1973.  
11 The permit was granted on September 4, 1973. A subcommittee of the  
12 Advisory Committee had adopted by September 4, 1973, for recommendation  
13 to the full committee, a policy statement that "commercial development  
14 locate inland from designated floodplain and shoreline areas unless that  
15 development is particularly dependent upon a shoreline location". The  
16 fill granted by the permit is not a "commercial development".

17 XII.

18 Appellants did not prove that the proposed fill would cause  
19 significant damage to existing ecological values or natural resources,  
20 nor prove that such would occur and create a hazard to adjacent life,  
21 property and natural systems. Appellants did not prove that the  
22 proposed fill would reduce flood storage capacity nor that a reduction  
23 of flood storage capacity would cause damage to others or property.

24 XIII.

25 Any Conclusion of Law hereinafter recited which should be deemed  
26 a Finding of Fact is hereby adopted as such.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 From these Findings the Shorelines Hearings Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 The Yakima River shoreline at and immediately adjacent to the  
5 site is not a natural one as that term is used in the Shoreline  
6 Management Act, but it is one of state-wide significance.

7 II.

8 Neither the respondent's application nor the substantial develop-  
9 ment permit authorized any commercial development upon the site.

10 III.

11 Respondent's proposed fill with the conditions imposed by this  
12 Board is a substantial development which would be consistent with the  
13 policy section of the Shoreline Management Act and the Guidelines of  
14 the Department of Ecology and the master programs being developed for  
15 Kittitas County, insofar as can be ascertained.

16 IV.

17 Our review of the question of whether the permit is consistent  
18 with the master program "so far as can be ascertained" (RCW 90.58.140(a)  
19 (111) is necessarily limited to the status of the master program as of  
20 the date of the issuance of the permit by the local government, not as  
21 of the date of the hearing on a review before this Board.

22 V.

23 Since respondent's property is within a flood control zone, he  
24 must also obtain a permit from the Department of Ecology before he can  
25 construct his fill pursuant to his shoreline management permit.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER



VI.

Kittitas County, in granting the permit, did consider and evaluate environmental factors and did comply with the requirements of the State Environmental Policy Act.

VII.

The permit is technically defective in that certain conditions sought to be imposed thereon by the County were not, as they should be, expressly made a part of the permit.

VIII.

The granting of a permit by respondent, Kittitas County, to respondent Pat Keating, should be affirmed, but the matter should be remanded to the County for the purpose of reissuing the permit in such form as shall expressly and definitely state thereon the conditions only under which the County shall allow the filling to take place under the permit. Such conditions must deal with the following:

1. There shall be a limitation on the height of the fill to the grade of the access road immediately adjacent to and bordering the Yakima River.
2. Provisions to prevent sediments from the fill entering the small stream on the up-river portion of the fill.
3. Limitation on the type of material to be used in the fill.
4. Specifications for drainage, top soiling, vegetative cover, and safety requirements during filling.
5. Prohibition against any further substantial development without a new substantial development permit.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
THURSTON COUNTY TO  
ZITTEL'S MARINA, INC.

MR. AND MRS. HENRY EICKHOFF,  
Appellants,

v.

THURSTON COUNTY and  
ZITTEL'S MARINA, INC.,

Respondents.

SHB No. 104

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A hearing on a request for review of an order granting a substantial development permit by the County of Thurston to Zittel's Marina, Inc. was held before the Shorelines Hearings Board in Lacey, Washington on August 1 and 2, 1974, before Board members Chris Smith, Arden A. Olson, designee of the State Commissioner of Public Lands, Gordon Y. Ericksen, representing the Association of Washington Cities, and Robert E. Beaty, representing the Washington State Association of

1 Counties, and Bernard G. Lonctot, sitting as hearing examiner.

2 Appellants, Mr. and Mrs. Henry Eickhoff, were represented by  
3 Ernest L. Meyer. Respondent, Zittel's Marina, Inc. was represented  
4 by Ray Hayes, and respondent, Thurston County, was represented by  
5 Thomas J. Taylor, Jr., Assistant Prosecuting Attorney.

6 From testimony heard, exhibits examined, transcript reviewed  
7 and assisted by the arguments of counsel, and exceptions filed, the  
8 Board makes the following

9 FINDINGS OF FACT

10 I.

11 Any Conclusion of Law hereinafter recited which should be  
12 deemed a Finding of Fact is hereby adopted as such.

13 II.

14 On October 26, 1972, Zittel's Marina, Inc. made application to  
15 the County of Thurston for a substantial development permit to  
16 construct and develop additional facilities and make other  
17 improvements to their marina located on Johnson Point. Notice was  
18 published in the legal newspaper; public hearings of the Thurston  
19 County Planning Commission were held. A draft environmental impact  
20 statement was prepared by Howard Godat, Engineer, and presented to  
21 the Thurston County Planning Staff on July 26, 1973. The staff  
22 examined the statement and made certain modifications. At the public  
23 hearings, various residents and landowners, including the appellants,  
24 Eickhoff, were heard, and thereafter the planning commission  
25 recommended to the County Commissioners approval of the shorelines  
26 permit for an additional 150 moorages and other improvements,

27 FINAL FINDINGS OF FACT,  
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1 including dockside facilities for the disposal of waste and the  
2 deepening of the channel. On September 3, 1973, after two public  
3 hearings, the Board of Thurston County Commissioners granted a  
4 substantial development permit. Thereafter, within the statutory  
5 period, appellants, Mr. and Mrs. Henry Eickhoff, the Department of  
6 Ecology and the Attorney General filed a request for review of the  
7 granting of said substantial development permit.

8 III.

9 The requests for review of the permit by the appellants,  
10 Eickhoff, the Department of Ecology and the Attorney General, were  
11 consolidated for hearing, said hearing being held before the  
12 Shorelines Hearings Board on February 1, 1974.

IV.

14 The Board, by order dated March 13, 1974, remanded the  
15 substantial development permit granted by Thurston County back to  
16 said county to make the permit more definite and certain.

17 V.

18 Thereafter, the respondent, Thurston County, did on May 6,  
19 1974, issue an amended substantial development permit to respondent,  
20 Zittel's Marina, Inc. This permit eliminated the solid bulkhead  
21 walk which was creating a material build-up problem, eliminated a  
22 substantial landfill for additional parking facilities, and required  
23 that all dredged material be removed to a deep water disposal site  
24 under supervision of the Department of Ecology. The solid bulkhead  
25 was to be replaced by floating walks which would permit the water  
to flow freely. There would in addition be a 60-foot open space

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 between the walkway and the shore. The number of new moorages  
2 allowed was decreased from 150 to 100, which would then provide a  
3 total wet storage capacity of 160 boats.

4 The Department of Ecology and the Attorney General, upon this  
5 amended permit, did withdraw from the hearing and SHB No. 113 was  
6 dismissed with prejudice.

7 VI.

8 The Board's proposed Findings of Fact and Conclusions of Law in this  
9 matter were issued on February 21, 1975. Exceptions to these Findings by  
10 the appellants concerning the admission of the Thurston County Master  
11 Program were properly taken by the Board and the hearing was reconvened on  
12 April 11, 1975, for the limited purpose of hearing evidence on the Thurston  
13 County Shoreline Master Program, insofar as it could be ascertained on  
14 date of this permit.

15 VII.

16 The Citizen's Advisory Committee for Shoreline Management for the  
17 Thurston Region began actively working on the Shoreline Master Program for  
18 Thurston County on July 1, 1973. The Committee held hearings throughout  
19 the county in the fall of 1973. The proposed Master Program embodied in  
20 Exhibit A-27 was received by the County Commissioners on May 8, 1974.  
21 There was no evidence as to the Master Program's content or its treatment  
22 of the area in question on September 3, 1973, the date of this permit.

23 VIII.

24 Zittel's Marina is located on Johnson Point. Johnson Point  
25 and Anderson Island are two of the better salmon fishing areas in  
26 southern Puget Sound. They are both near Zittel's Marina. The

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 marina is also within ten water miles of five water-oriented state parks.

2 IX.

3 The Zittels purchased approximately 17 acres of land on  
4 Johnson Point in 1957. At that time there was a rental, launching  
5 and storage facility for 26 small boats located thereon. In 1965,  
6 the Zittels built the present facilities, which consist of a boat  
7 landing, boat launching and take-out ramp, boat removal equipment,  
8 40 covered and 20 open moorages, and various storage houses.

9 X.

10 Appellants, Eickhoff, are the owners of approximately 80 acres  
11 of land lying to the south of the marina. The land is unimproved.  
12 The Eickhoffs have listed their property for sale.

13 XI.

14 The Eickhoffs believe that expansion of the marina will further  
15 impair the aesthetic value of their property, restrict boat access  
16 to, and resident use of, Baird Cove, and have an adverse effect on  
17 the fish and shellfish in the area, especially the cove. Additionally,  
18 neighboring property is adversely affected by accumulating debris.  
19 They claim that the proposed new facilities, as planned, would  
20 increase the negative environmental impacts.

21 XII.

22 Although the initial development of the marina in 1965 had  
23 an adverse effect on the fish and shellfish in the immediate  
24 area of the marina, the Department of Fisheries has determined  
25 that there would be little additional adverse effect at this time  
26 if expansion is permitted. The Department of Fisheries and the

27 FINAL FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 Thurston County Planning Department feel that close monitoring of  
2 construction by the U.S. Army Corps of Engineers, through its permit  
3 requirements, will greatly diminish the possibility of harm to the  
4 shellfish and fish in the area.

5 XIII.

6 In order to alleviate the debris problem, Zittel's has agreed  
7 to remove a 60-foot section of dock, lying near the north property  
8 line, extending east from the shore, and to eliminate a portion of  
9 the log boom. In order to lessen noise and wake problems, it will  
10 encourage its users to proceed more slowly in the vicinity of the  
11 marina.

12 XIV.

13 There is an undeniable need for additional marina facilities  
14 and moorage in Thurston County. It is also undeniable that further  
15 marina construction will have an adverse effect on the environment  
16 in terms of noise, aesthetics, and impact on marine ecology. The  
17 total adverse impact resulting from the expansion of the existing  
18 facility is considered to be less than that which would be generated  
19 by a new facility. Evidence presented at the hearing indicates that  
20 regardless of the Zittel's development, there will continue to be  
21 a substantial unmet demand for marina and moorage facilities in  
22 Thurston County.

23 XV.

24 The substantial development permit was reissued May 6, 1974.

25 From these Findings the Shorelines Hearings Board comes to these

26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 Any Finding of Fact which should be deemed a Conclusion  
4 of Law is hereby adopted as such.

5 II.

6 RCW 90.58.020 reads in part:

7 . . . that unrestricted construction on  
8 the privately owned or publicly owned  
9 shorelines of the state is not in the  
10 best public interest; and therefore,  
11 coordinated planning is necessary in  
12 order to protect the public interest  
associated with the shorelines of the  
state while, at the same time, recognizing  
and protecting private property rights  
consistent with the public interest.

3 The same section goes on to say:

14 . . . This policy is designed to insure the  
15 development of these shorelines in a manner  
16 which, while allowing for limited reduction  
17 of rights of the public in the navigable  
waters, will promote and enhance the public  
interest.

18 The section further goes on to say:

19 . . . Alterations of the natural condition of the  
20 shorelines of the state, in those limited instances  
21 when authorized, shall be given priority for single  
22 family residences, ports, shoreline recreational  
uses including but not limited to parks, marinas, piers,  
and other improvements facilitating public access to  
shorelines of the state, . . . .

23 The legislature has concluded, therefore, that public interest  
24 is of paramount importance in establishing shoreline management  
25 priorities. The Thurston County Planning Commission and  
the Thurston County Commissioners represent the public interest

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER



1 in disposition of the instant permit. Such representatives of the  
2 public interest have concluded that the proposed expansion of  
3 Zittel's Marina is in the best interests of the people of Thurston  
4 County in that additional marina facilities are undeniably needed  
5 and that such expansion will have a lesser adverse affect on the overall  
6 shorelines of Thurston County than the establishment of new and/or  
7 other independent facilities. The instant permit, therefore, is  
8 consistent with RCW 90.58.

9 III.

10 The dispositive guidelines in this case are those of the  
11 Department of Ecology found in WAC 173-16-060(5) which concerns  
12 itself, among other things, with the location of marina facilities.  
13 Such provision concludes that high use location should be identified  
14 and in (c) holds that "master programs should identify locations that  
15 are near high use or potentially high use areas for proposed marina  
16 sights. Local as well as regional 'need' data should be considered  
17 as input in location selections. Similarly WAC 173-16-060(19)  
18 must also be considered. That provision in (c) states that "priority  
19 should be given to the use of community piers and docks . . . In  
20 general, encouragement should be given to the cooperative use of  
21 piers and docks."

22 Unquestionably, private concerns and private uses will differ  
23 sometimes from the conclusions and policies of those who represent  
24 the public interests. Such is the case here. In this matter,  
25 representatives of the public interests acted in accordance with the  
26 pertinent guidelines. The instant permit is consistent therewith.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 IV.

2 As of the date of this permit, September 3, 1973, Thurston County's  
3 Shoreline Master Program was not sufficiently developed to permit this  
4 Board to ascertain whether this permit was in conformity with that Program.  
5 It is the policy of this Board to require that permits must conform to  
6 Shoreline Master Programs insofar as they can be ascertained on the date a  
7 permit is issued. We will not require permits to be consistent with  
8 standards developed after the date of their issuance.

9 V.

10 The instant permit, having met the three tests of RCW 90.58 and  
11 the guidelines and master program thereof, should be approved.

12 From these Conclusions, the Shorelines Hearings Board issues this

13 ORDER

14 The granting of a shorelines management permit for the expansion  
15 of Zittel's Marina by the Thurston County Commissioners, on the  
16 recommendation of the Thurston County Planning Commission, is hereby  
17 affirmed.

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington, this 28<sup>th</sup> day of April, 1.

2 SHORELINES HEARINGS BOARD

3 Arden A. Olson  
4 ARDEN A. OLSON, Member

5 Robert E. Beaty  
6 ROBERT E. BEATY, Member

7 Walt Woodward  
8 WALT WOODWARD, Member

9  
10 I dissent.

11 W. A. Gissberg  
12 W. A. GISSBERG, Member

13 Chris Smith  
14 CHRIS SMITH, Chairman

15 Gordon Y. Ericksen  
16 GORDON Y. ERICKSEN, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER